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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/803,545	03/09/2001	Stanislaus Pietrucha JR.	2008-00100	7312
23505	7590	11/03/2004	EXAMINER	
CONLEY ROSE, P.C.			MCALLISTER, STEVEN B	
P. O. BOX 3267			ART UNIT	
HOUSTON, TX 77253-3267			PAPER NUMBER	
			3627	

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/803,545

Applicant(s)

PIETRUCHA ET AL.

Examiner

Steven B. McAllister

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 33-56 and 153-178 is/are pending in the application.
- 4a) Of the above claim(s) 153-178 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Species I in the reply filed on 8/9/2004 is acknowledged. The traversal is on the ground(s) that the two species cover the same subject matter, one merely more broadly than the other. This is not found persuasive because one is not generally "affiliated" with an address. *Webster's Collegiate Dictionary, 10<sup>th</sup> ed.* defines affiliated as "closely associated with another typically in a dependent relationship". This definition does not describe the relationship between a person and his address. Also, in light of the specification, the use of affiliation appears to be to affiliate the person with the brand partner, not the address. Therefore, the examiner believes that the difference between the two species is not merely one of breadth, but one of presenting service options based on affiliation with some entity as opposed to presenting them based on an address.

The requirement is still deemed proper and is therefore made FINAL.

Claims 153-178 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 8/9/2004.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 33-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKinley et al (2001/0044743) in view of Tobin (6,141,666).

McKinley shows entering offering provider offerings into a database; adding customer accounts into the database; generating from the database a list of offerings available based on an address associated with the customer (e.g., steps 1002, 1004); transmitting the list to the customer; receiving orders from the customers (e.g., par. 49); updating the database to reflect the order information; providing the information to the offering providers. McKinley inherently shows receiving a communication from the service provider and updating the database with the information because after ordering the new service the system continues to compare the customer's new service rate with other service rates and to correctly compare rates it is necessary to know whether the order is accepted by the service provider and what rate is attached to the account. McKinley does not show entering brand partner customization elements into the database or that the list is tailored according to customization elements of the brand partner. Tobin shows entering brand partner customization elements and tailoring the list according to customization elements (e.g., col. 2, lines 58-68, "HomeArts" branding element associated presentation of offerings in Fig. 23 etc.). It would have been obvious to one of ordinary skill in the arts to modify the method of McKinley by providing

brand partner association and customization as shown by Tobin in order to gain more customers via the brand partner.

As to claims 34-36, it is noted that McKinley shows that offerings include utilities. It does not show the particular brand partners or users. However, it is notoriously old and well known in the art to use the particular brand partners and users. It would have been obvious to do so in order to increase the pool of users directed to the website.

Additionally, regarding claims 34-36, it is noted that they are interpreted as obvious variants. Were it determined that the claims were patentably distinct, a species requirement would be necessary.

As to claims 38 and 39, McKinley shows all elements.

As to claim 37, McKinley shows all except goods for lease. However, offering goods for lease is notoriously old and well known in the arts. It would have been obvious to one of ordinary skill in the art to offer goods for lease in order to increase the amount of traffic and revenue through the website.

Further, regarding claims 37-39, it is noted that they are interpreted as obvious variants. Were it determined that the claims were patentably distinct, a species requirement would be necessary.

As to claim 40, McKinley in view of Tobin shows presenting a list of categories. It does not show that the list of categories is selected based on the customer's address. However, to do so is notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art to further modify the method McKinley by

presenting only categories available in the customer's area in order to more efficiently promote the services.

As to claim 41, McKinley in view of Tobin show sending a comparison of customer selected offerings (e.g., Fig. 6C of McKinley).

As to claim 42, McKinley in view of Tobin show offering plans comprising "AT&T" plan, etc.; packages comprising the "AT&T One Rate", etc.; and features.

As to claims 43-47, McKinley in view of Tobin show all elements except a selection icon for features and packages on the comparison chart; pricing status including "included", "optional", and "not available"; and storing features as individually purchasable. However, to provide these features is notoriously old and well known. For instance comparison shopping websites have long provides these elements. It would have been obvious to one of ordinary skill in the art to further modify the method of McKinley in order to provide for more flexible shopping.

As to claims 51 and 52, McKinley in view of Tobin show customization elements including text color (color of the text in the branding logo), logo, a marketing image comprising the logo, text content comprising the words of the logo, and font of the logo. It does not show layout, foreground color or background color. However, providing these as customization elements is notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art to provide these elements in order to more provide greater flexibility in associating the site with the brand partner.

As to claim 53, it is inherent that McKinley shows this element since in order to provide telephone service the provider must know the telephone number and is therefore able to contact the customer.

As to claims 54 and 55, McKinley in view of Tobin show all elements except emailing the provider and having them periodically retrieve the information via the internet. However, to do so is notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art to modify the method McKinley by doing so in order to allow the service provider to use a "pull" polling scenario at his convenience.

Additionally, regarding claims 54 and 55, it is noted that they are interpreted as obvious variants over claim 53. Were it determined that the claims were patentably distinct, a species requirement would be necessary.

As to claim 56, McKinley in view of Tobin show all elements.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

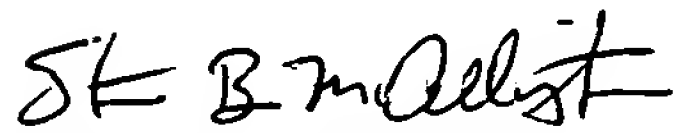
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (703) 308-7052. The examiner can normally be reached on M-Th 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P. Olszewski can be reached on (703) 308-5183. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Steven B. McAllister

**STEVE B. MCALLISTER**  
**PRIMARY EXAMINER**